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DATED: 19TH JANUARY, 2005

1. Heard Mrs. Doshi, the learned counsel for the petitioner Union and Mr. Rele, the learned senior counsel for the respondent company.

2. There was a settlement signed between the parties for the period from 1.7.1993 to 30.6.1996 and the respondent company on 29.4.96 issued a notice of change intending to withdraw some of the benefits of the said settlement to the non management staff members in Grade 21 to 32 and whoever was covered by the said settlement. The petitioner Union opposed the said notice of change and ultimately the notice of change was referred for adjudication to the

Industrial Tribunal and came to be registered as Reference (IT) No.12/1997. In the said Reference, after the statement of claim was filed, the respondent company it submitted an application for amendment of the same at Exh.C-15. The company had sought to amend the statement of claim to the extent that the subject notice of change would adversely affect only 181 of the non management staff rather than the earlier number shown at 366 and these employees were from the categories of Assistant Superintendent, Assistant Foreman, Chargeman, Foreman, Junior Engineer, Junior Shift Chemist, Junior Supervisor, Plant Chemist, Shift Chemist, Senior Chargeman, Supervisor and School Teacher. This application for amendment was opposed by the Union by filing its reply. However, by order dated 17.9.2004, the learned Member of the Industrial Tribunal allowed the amendment application. Hence, this petition.

3. It was submitted by Mrs Doshi that this amendment application moved by the company was a surreptitious exercise of changing the status of some of the non management staff so as to defeat their individual complaints pending before the Labour Court and also the charter of demand pending for adjudication in Reference (IT) No. 10/1997. It was further contended that the learned Member of the Industrial

Tribunal has, by the impugned order, adjudicated upon the status of these non management staff members as being excluded from the category of "Workmen" as defined under the Industrial Disputes Act, 1947. The order passed by the Industrial Tribunal is contrary to the order passed by this Court in Writ Petition No.2274 of 2002 as well as the well settled position in law. It was further submitted that the company, all along, had accepted these management staff members as Workmen and signed number of settlements in respect of all these employees as well right from 1972 onwards.

4. The amendment application at Exh.C-15 stated that in paragraph 2 of the statement of claim submitted on 17.10.2000, the number of employees adversely affected by the notice of change was shown to be 366 but the same figure was found to be erroneous on verification of the number of concerned staff members and the said number of employees who would be adversely affected would be only 181. It was further submitted that the employees who were not workmen were also included in the said number of 366 and they were from the categories as listed hereinabove. The names of the technical staff who were sought to be excluded and numbered at 139 were listed in Annexure "A" and the names of the teachers and other managerial category employees were listed in Annexure

"B" to the said application for amendment. The learned Member of the Industrial Tribunal after hearing the arguments advanced by the respective parties held that the company was trying to reduce the number of employees adversely affected by the notice of change which was the subject matter of adjudication in Reference (IT) No. 12 of 1997 and such a change was within the prerogative of the company. In the Reference made by the competent authority for adjudication. The number of employees adversely affected by the notice of change was not mentioned and it was not for the tribunal in Reference (IT) No.12 of 1997 to deal with the aspect as to which category of employees were falling within the definition of the term "Workman". The learned Member went to the extent of observing that the employees whose names were deleted would be happy to know that they would not be in any way adversely affected by the subject notice of change which was pending for adjudication.

5. It is a fact that this Court in Writ Petition No. 2274 of 2002 had granted interim relief in complaint Nos.22 to 115 of 2001 and also in other connected complaints. It appears that about 115 employees had moved the Labour Court by filing complaints of Unfair Labour Practice and most of them were sought to be deleted from the subject notice of change. The Union

was agitated on the ground that it was the back door exercise of the company to change the status of non management staff members who had moved complaints of Unfair Labour Practice before the labour Court and who were the interested parties in Reference (IT) No. 10 of 1997 and in this exercise the Industrial Tribunal was sought to be taken support of. These allegations do not find force having regard to the order impugned. The learned Member has clarified in paragraphs 12 and 13 that all contentions raised by the Union in Reference (IT) No. 10 of 1997 would in no way be affected and all that the amendment application sought was to reduce the number of adversely affected employees by the subject notice of change from 366 to 181. In my considered opinion, the view taken by the Industrial Tribunal by allowing the amendment application does not suffer from any error apparent on the face of the record or the said order cannot be termed as perverse, so as to call for interference under Article 227 of the Constitution.

6. By way of abundant precaution it needs to be clarified that the impugned order in no way adjudicates upon the status of non management staff in the categories of Assistant Superintendent, Assistant Foreman, Charge-man, Foreman, Junior Engineer, Junior Shift Chemist, Senior Supervisor, Junior Supervisor, Plant Chemist, Senior Chargeman

and Senior Foreman. The Union is at liberty to claim their status as a workman in the pending Reference (IT) No. 10 of 1997 by adducing appropriate evidence and it is well settled that the label or designation is not the sole determining factor for holding such employees to be "workmen" within the meaning of Industrial Disputes Act, 1947. It is further clarified that any of the staff members from these categories and who are before the Labour Court or Industrial Court in individual complaint or complaints moved by the Union, are at liberty to claim their status as a workman as defined in the Industrial Disputes Act, 1947 and the impugned order passed by the Tribunal would not come in their way in that regard and undoubtedly this issue would be decided by the Tribunal as per law. The impugned order does not amount to changing the status of 181 non-management staff so as to exclude them from the status of "workmen" and in case such a plea is taken by the Company in Reference (IT) No. 12 of 1997, the Union is at liberty to contest the same by filing additional written statement and by leading evidence. In the result, this petition must fail and the same is hereby rejected. Ad interim order granted earlier stands vacated.

7. Mrs. Doshi, the learned counsel for the petitioner orally prayed for stay to this order, the

same is hereby rejected.

8. Certified copy is expedited.